

Claimant alleged he was injured on September 5, 2001, when he picked up a mold he had been sandblasting. Claimant testified that as he bent over and picked up the mold

both shoulders popped out of their sockets. As he stood up both shoulders popped back in their sockets.

Claimant testified that although he was sore, he worked for approximately two more hours, completed his workday and went home. Claimant testified he reported the accident to Susan Hobbs, a staffing specialist for respondent, the following morning. Claimant testified he also called Charlie Smith at Pressure Cast and was told he would need a work release to go back to work.

Claimant sought treatment on September 10, 2001, and gave a history of his shoulder popping out of joint when picking up a mold at work.

Susan Hobbs testified claimant had a history of attendance problems with Pressure Cast. On the morning of September 6, 2001, she received a call from Charlie Smith at Pressure Cast advising her that claimant had not shown up for work and inquiring if she had heard from claimant. Ms. Hobbs advised Mr. Smith she had not. Mr. Smith then requested that respondent terminate claimant's assignment at Pressure Cast because of claimant's attendance problems.

After talking with Mr. Smith, Ms. Hobbs tried calling claimant but did not reach him that morning. She did receive a call from claimant that afternoon. Claimant advised Ms. Hobbs that he was missing work because his shoulder was sore. Ms. Hobbs inquired if something had happened at work and was told it had not. She advised claimant that if it was work-related he would need to come in and fill out a report. Claimant reiterated that his shoulder complaints started in the afternoon after work and further noted his shoulder would pop out from time to time because of a prior motorcycle accident.

Ms. Hobbs then advised claimant that his assignment at Pressure Cast was terminated because of the attendance problems. The reason for the termination was confirmed by respondent's president who noted claimant had not informed anyone at Pressure Cast about the alleged accident until after his assignment at Pressure Cast was terminated.

At the conclusion of the hearing the Administrative Law Judge stated he did not believe claimant injured himself at work and concluded he believed claimant's story changed from being hurt in the afternoon to being hurt at work when claimant was told he was being terminated from work with Pressure Cast.

As noted above, there is definitely conflicting testimony in this case. The claimant and respondent's representative, staffing specialist Susan Hobbs, both testified in person before the Administrative Law Judge. Their testimony is in direct conflict with each other. Thus, credibility is at issue. The Administrative Law Judge had the opportunity to assess the witnesses' demeanor. Oftentimes, when an Administrative Law Judge renders a

decision regarding the credibility of witnesses who testify in person before him, as in this case, the Board gives some deference to that opinion.

The comments made by the Administrative Law Judge at the conclusion of the January 16, 2002, preliminary hearing clearly reflect that, after considering claimant's testimony and that of the other witnesses, the Judge found claimant's credibility to be lacking. The Administrative Law Judge found claimant had failed to prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged. The Board's review of the record suggests it is reasonable to rely on the Administrative Law Judge's determination of credibility in this case and concludes the claimant did not prove he suffered accidental injury arising out of and in the course of his employment. Accordingly, the Order should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Jon L. Frobish dated January 17, 2002, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March 2002.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Roger E. McClellan, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director